



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI.**

**SUCCESSION CAUSE NO. 1165 OF 2008**

**IN THE MATTER OF THE ESTATE OF MOFFAT MARIGA NGETHE (DECEASED)**

**RULING**

1. The applicant in this matter is the son of the deceased Moffat Mariga Ngethe. Upon his death the 1<sup>st</sup> respondent the deceased wife petitioned for a grant of the deceased estate. The grant was confirmed on the 9/3/10. Nellie Wanjiku Moffat the 1<sup>st</sup> respondent and mother of the applicant was to hold Kiambaa/Kihara 811 absolutely.
2. On the 18/4/2013 Justice Kimaru revoked the grant of letters of administration confirmed on the 9/3/2010 and ordered that a fresh one be issued to Nellie Wanjiku Moffat, Amos Ngethe Manga and Gideon Karima Mariga. On the 28/5/2012 this court set aside the ruling delivered by Justice Kimaru on the 18/4/2013 in respect of Kiambaa/Kihara 4839. This is after the 2<sup>nd</sup> respondent moved the court to have the said judgment set aside.
3. The applicant has now filed an application dated the 4/5/2015. He seeks the following orders;
  - i. Spent
  - ii. That the court be pleased to issue an inhibition order inhibiting any registration of any dealing with the parcel numbers Kiambaa/Kihara /4837, 4838 and 4839 the resultant subdivision of Land Parcel Number Kiambaa/Kihara /811 pending the hearing of the application for revocation of Grant.
  - iii. That pending the application for inhibition the court be pleased to make an instant interim order making an inhibition order pending prayer 2 above.
4. The applicant filed an affidavit in support of the application dated the 11/6/2015. His case is that after their father's death the mother became the administrator of their father's estate. This they consented to as children of the deceased having been explained to and assured that they would share the deceased land parcel Kiambaa/Kihara 811 equally and each of the deceased children continued occupying the portion which they had put up his dwelling. That on the 26<sup>th</sup> November 2011 he approached 2 brothers Harrison Kamau Mariga and Antony Njau Mariga who told him that the land on which he constructed a permanent house belonged to them and that he would be evicted. Upon being told this he went to the Land Registry and found that the said Land Parcel Kiambaa/Kihara 811 had been divided into 3 portions namely; L. R Kiambaa/Kihara /4837 to Nellie Wanjiku Moffat as trustee of Moffat Mariga Waithira the deceased's grandson not the son of the deceased, L. R Kiambaa/Kihara 4838 to Harrison Kamau Mariga & Antony Njau Mariga sons of the deceased and L.R No. Kiambaa/Kihara /4839 to Grace Wakonyo Kungu who is not related to the deceased. He realized that his brother Amos Ngethe Mariga and he had been disinherited. That his brother and him have been given verbal notice to vacate and unless an inhibition order is granted there are high chances of being evicted leading to total disinheritance.
5. The 1<sup>st</sup> respondent did not respond to the application.
6. The 2<sup>nd</sup> respondent opposed the application. She filed a replying affidavit dated the 7/8/2015.

She avers that she purchased Kiambaa/Kihara /4839 from Nellie Wanjiku Moffat the administrator after the subdivision. This happened after the grant was confirmed. She has a title deed that was issued in her name on the 11<sup>th</sup> November 2011. That there was no limitation in the confirmed grant as the certificate indicated that Nellie Wanjiku Moffat was to own Kiambaa/Kihara 811 absolutely. That she has been advised that as the registered proprietor of the portion she owns her proprietary interests in the property continue and cannot be extinguished by Section 93 of the Law of Succession Act and that the orders sought are adverse to her rights as a registered proprietor of the portion of the suit property. That Nellie was entitled to exercise the powers confirmed by Section 82 of the Law of Succession Act notwithstanding the provisions of Sections 35. That if the application is allowed she stands to suffer irreparable loss and the enjoyment of the proprietary rights bestowed on her.

7. Counsels made oral submissions on the said application. I have considered the said submissions together with what has been deposed in the affidavits filed by the parties.
8. It is not in dispute that the 1<sup>st</sup> respondent was made the administrator of the deceased estate and then subsequently Justice Kimaru appointed 2 other beneficiaries to join her as administrator. The 2<sup>nd</sup> respondent argues that she is a bonafide purchaser and is protected by section 93 of the Law of Succession Act.
9. The applicant has stated his reasons for seeing the inhibition. He argues that he could be disinherited. By issuing an inhibition a courts main aim is to protect the property of the deceased. A beneficiary has right to come to court in the event he/she is facing disinheritance. Even if the 2<sup>nd</sup> respondent was a purchase for value I found that in the interest of justice it would be properly to issue an inhabitation order on the 3 properties Kiambaa/Kihara /4837, 4838 and 4839.
10. In my view no prejudice shall be occurred at this stage. The administrators need to move court quickly have the grant confirmed so that the mode of distribution can be done and parties can thereafter secure their inheritance. The said application to be filed within 60 days hereof. Costs shall be in the cause.

Dated, signed and delivered this 5<sup>th</sup> Day of November 2015

**R. E OUGO**

**JUDGE**

In the presence of:

.....Applicant

.....1<sup>st</sup> Respondent

.....2<sup>nd</sup> Respondent

.....Court Clerk